

E-FILED - 6/12/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GLENN KUCHARSKI,) No. C 06-3969 RMW (PR)
Petitioner,) ORDER DENYING CERTIFICATE
vs.) OF APPEALABILITY
JOANNE WOODFORD,) (Docket No. 25)
Respondent.)

Petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was denied on its merits. Petitioner has filed a notice of appeal, which the court construes as including a request for a certificate of appealability. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

“Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” Slack v. McDaniel, 120 S.Ct. 1595, 1604 (2000).

Except for substituting the word “constitutional” for the word “federal,” section 2253(c)(2) codified the standard announced by the United States Supreme Court in Barefoot v. Estelle, 463 U.S. 880, 892-93 (1983). Slack, 120 S. Ct. at 1603. In Barefoot, the court explained

1 that “a substantial showing of the denial of [a] federal right” means that a petitioner “must
2 demonstrate that the issues are debatable among jurists of reason; that a court could resolve the
3 issues [in a different manner], or that the questions are adequate to deserve encouragement to
4 proceed further.” Barefoot, 463 U.S. at 893 n.4 (citations and internal quotations omitted;
5 emphasis in original). Any doubts about whether the Barefoot standard has been met must be
6 resolved in petitioner’s favor. Lambright v. Stewart, 220 F.3d 1022, 1024-25 (9th Cir. 2000).

7 The court denied the instant petition after careful consideration of the merits. The court
8 found no violation of petitioner’s federal constitutional rights in the underlying state court
9 proceedings. Petitioner has failed to demonstrate that jurists of reason would find it debatable
10 whether this court was correct in its ruling. Accordingly, the court will DENY petitioner’s
11 request for a certificate of appealability.

12 The Clerk shall serve notice of this order forthwith to the United States Court of Appeal
13 and to the parties. See Fed. R. App. P. 24(a).

14 This order terminates docket number 25.

15 IT IS SO ORDERED.

16 DATED: 6/6/08


RONALD M. WHYTE
United States District Judge